

AN ACT

ENTITLED, An Act to revise certain firm ownership provisions regarding real estate license holders and to make form and style revisions to certain provisions related to the Real Estate Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-21A-1 be amended to read as follows:

36-21A-1. Terms used in this chapter mean:

- (1) "Agency," any relationship by which one person acts for or on behalf of a client subject to the client's reasonable direction and control;
- (2) "Agency agreement," a written agreement between a broker and a client which creates a fiduciary relationship between the broker and client. The payment or promise of payment of compensation to a responsible broker does not determine whether an agency relationship has been created between any responsible broker or licensees associated with the responsible broker and a client;
- (3) "Auction," any public sale of real estate as defined in § 36-21A-11 or business property as defined in subdivision 36-21A-6 (3) at public offering to the highest bidder;
- (4) "Auctioneer," any person licensed under this chapter who auctions, offers, attempts or agrees to auction real estate or business opportunities;
- (5) "Broker associate," any broker acting in association with or under the auspices of a responsible broker;
- (6) "Client," any person, including a seller/landlord or a buyer/tenant, who has entered into an agency relationship with a real estate licensee;
- (7) "Commission," the South Dakota Real Estate Commission;
- (8) "Consumer," any person seeking or receiving services from a real estate broker;
- (9) "Customer," any party to a real estate transaction who does not have an agency

relationship with a licensee;

- (10) "Designated broker," any broker licensee designated by a responsible broker to act for the company in the conduct of real estate brokerage;
- (11) "In-company transaction," any transaction in which both the seller/landlord and the buyer/tenant receive real estate services from the same broker or from licensees associated with the same broker;
- (12) "Licensee," any person holding a license issued pursuant to this chapter;
- (13) "Limited agent," any licensee who has a written agency relationship with both the seller and the buyer in the same in-company transaction;
- (14) "Person," any individual, corporation, limited liability company, partnership, limited partnership, association, joint venture or any other entity, foreign or domestic;
- (15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an interest in real property;
- (16) "Responsible broker," any person holding a broker's license issued pursuant to this chapter who is responsible for the real estate activities conducted by those licensees acting in association with or under the auspices of the responsible broker;
- (17) "Served actively," if referring to a real estate salesman or broker associate, having the license on an active status with the commission;
- (18) "Single agent," any licensee who represents only one party to a transaction;
- (19) "Transaction broker," a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction. The term includes the licensees associated with the broker;
- (20) "Transaction broker agreement," a written agreement in which the broker does not represent either the seller or the buyer in a fiduciary capacity. No brokerage relationship

can be created or implied by word or action alone, but only by written agreement clarifying the brokerage relationship.

Section 2. That § 36-21A-33 be amended to read as follows:

36-21A-33. An application may be denied for any one of the following reasons:

- (1) The applicant has written insufficient funds checks within the calendar year before application or has written an insufficient funds check for the application;
- (2) The applicant has been convicted of a felony or of a misdemeanor involving moral turpitude. If the applicant is a firm, a license may be denied if any partner, associate, director, stockholder, officer or responsible broker has been convicted of a felony or of a misdemeanor involving moral turpitude;
- (3) The applicant has been disciplined by a regulatory agency in relation to activities as a real estate salesperson or broker, broker associate, firm, appraiser, mortgage broker, auctioneer or any other regulated licensee, including insurance, securities, law and commodities trading;
- (4) The applicant has failed to satisfy the requirements as provided by this chapter;
- (5) The applicant has failed the prelicense school examination;
- (6) The applicant has not met education requirements;
- (7) The applicant made deliberate misstatements, deliberate omissions, misrepresentations or untruths in the application; or
- (8) The applicant has a current and unpaid judgment filed against the applicant.

Section 3. That § 36-21A-38 be amended to read as follows:

36-21A-38. No license may be granted to a corporation, limited liability company, partnership or association, unless the corporation, limited liability company, partnership, or association designates a responsible broker who will represent the corporation, limited liability company,

partnership, or association. A nonlicensed individual may have an ownership interest in any corporation, limited liability company, partnership, or association through which a responsible broker engages in professional real estate activity. However, no nonlicensed individual may control or supervise the professional real estate activity of any real estate licensee associated with the firm. No nonlicensed individual may have any ownership interest in a sole proprietorship that engages in professional real estate activity. The responsible broker shall sign the application for the license. Upon the termination of a responsible broker's affiliation with the firm, the firm shall name a new responsible broker and notify the commission in writing. The application fee for a firm license shall be set out by rule, promulgated by the commission pursuant to chapter 1-26, and may not exceed one hundred dollars.

Section 4. That § 36-21A-39 be amended to read as follows:

36-21A-39. Upon dissolution of a corporation, partnership, limited liability company, or association, the responsible broker shall immediately return the firm license to the commission.

Section 5. That § 36-21A-40 be repealed.

Section 6. That § 36-21A-46 be repealed.

Section 7. That § 36-21A-58 be amended to read as follows:

36-21A-58. A salesperson or broker associate who is not associated with a responsible broker may renew the license by submitting the renewal fee, together with the completed renewal application on which the licensee has noted inactive status. An inactive salesperson or broker associate whose license has been renewed may not engage in the real estate business until the licensee secures a new responsible broker.

Section 8. That § 36-21A-70 be amended to read as follows:

36-21A-70. If the commission suspends, revokes, or takes any other action against a responsible broker, the action may apply to the responsible broker's firm and the firm license may be revoked,

suspended, or otherwise disciplined. Each licensee shall terminate the licensee's relationship with the disciplined firm if the firm's license has been revoked or suspended.

An Act to revise certain firm ownership provisions regarding real estate license holders and to make form and style revisions to certain provisions related to the Real Estate Commission.

I certify that the attached Act
originated in the

SENATE as Bill No. 47

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 47
File No. _____
Chapter No. _____

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State